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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JOHN WAYNE ZIDAR,

14 Defendant.
15

NO. CR01-108RSM

ORDER GRANTING IN PART AND
DENYING IN PART,
DEFENDANT'S MOTION
FOR DISMISSAL OR JUDGMENT
OF ACQUITTAL

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17 THIS MATTER having come before the Court upon a motion by the Defendant
18 John Wayne Zidar to dismiss counts charged against him for money laundering and
19 promotion of mail and wire fraud. Having considered the entirety of the record and file
20 herein, the Court finds and rules as follows:

- 21 1) Defendant's motion as to Counts 26 and 27 is GRANTED.
22 2) Defendant's motion as to the remaining counts, 29, 31, 32, 33, 34, 35 ,36 and 38 is
23 DENIED.

24 As to these remaining counts, the Court further finds that the motion is beyond the
25 scope of the Ninth Circuit's remand in this case. The Ninth Circuit remanded this matter
26 to the Court for resentencing only, not to allow defendant to challenge counts of
27 conviction. It is well established that, when an appellate court limits the scope of the
28 remand, the district court is without authority to examine other issues on remand. United

1 States v. Davis, 519 F. 3d 926 (9th Cir. 2008). Any claim that Defendant might have may
2 only be brought after Defendant is resentenced and his appeal from that resentencing is
3 completed, pursuant to 28 U.S.C § 2255.

4 The Court finds that even if the Court were to consider Zidar's motion, it would be
5 denied on the merits. The recent Supreme Court decision, United States v. Santos, 128 S.
6 Ct. 2020 (2008) is not relevant to Zidar's international money laundering convictions,
7 Counts 32 -36, because those counts did not require any finding that they involved
8 "proceeds" of unlawful activity. Similarly, Count 38 is also unaffected by Santos as well.

9 The Court finds that Santos does not apply to Counts 29 and 31 for two reasons.
10 First, the Santos case does not apply in any context other than illegal gambling, and
11 therefore, it does not overrule existing Ninth Circuit case law that fully supports the
12 convictions. Second, even if Santos did apply the transactions charged in these counts
13 involved profits, rather than gross receipts.

14 WHEREFORE, it is hereby ORDERED that the defendant's motion to dismiss
15 Counts 26 and 27 is GRANTED. Probation is ordered to delete any references to these
16 offenses as offenses of conviction in the guideline and sentencing calculations in its
17 pending Presentence Report. The remainder of defendant's motion is DENIED.

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19 DATED this 17th day of June, 2009.

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22 RICARDO S. MARTINEZ
23 UNITED STATES DISTRICT JUDGE
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